

CALIFORNIA COASTAL COMMISSION

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Staff Report: 11/22/2005
Hearing Date: December 14, 2005
Commission Action:

**W5h****STAFF REPORT: CONSENT CALENDAR****APPLICATION NUMBER:** 5-05-379**APPLICANT:** Robert MacKenzie **AGENT:** N/A**PROJECT LOCATION:** 5115 Via Donte (Lot 1, Block 13, Del Rey Beach Tract), Venice, City of Los Angeles, Los Angeles County.**PROJECT DESCRIPTION:** Construction of a four-level, 45-foot high, 5,860 square foot single-family residence with an attached three-car garage on a vacant lagoon-fronting lot.

Lot Area	4,550 square feet
Building Coverage	2,201 square feet
Pavement Coverage	720 square feet
Landscape Coverage	1,629 square feet
Parking Spaces	3
Zoning	RD1.5-1
Plan Designation	Single Family Residence
Ht above final grade	45 feet

LOCAL APPROVAL: City of Los Angeles Planning Department Approval, Case No. DIR2002-2368 (SPP), 6/7/02.**SUBSTANTIVE FILE DOCUMENTS:**

1. City of Los Angeles certified Venice Land Use Plan, 6/14/2001.
2. Coastal Development Permit A-266-77 (ILA) & amendment.
3. Coastal Development Permit 5-87-112 (Del Rey Assoc.) & amendment.
4. Coastal Development Permit 5-86-641 (Lee) & amendments.
5. Coastal Development Permit 5-95-152 (Ballona Lagoon Enhancement Plan).
6. Coastal Development Permit 5-85-373 (Mitchell/Nowak) & amendments.
7. Coastal Development Permit Application 5-02-278 (MacKenzie).
8. Coastal Development Permit Application 5-02-193 (MacKenzie).

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission **APPROVE** a coastal development permit for the proposed development with special conditions relating to the protection of Ballona Lagoon (ESHA), maintenance of public areas, compliance with underlying permit requirements, building setback and height limit, and the provision of adequate parking. The applicant agrees with the recommendation. **See Page Two for the motion.**

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with special conditions:

MOTION: *"I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations."*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

I. Resolution: Approval with Conditions

The Commission hereby **APPROVES** a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Approved Development - Permit Compliance

Coastal Development Permit 5-05-379 approves the construction of a new single-family residence, including site preparation and excavation for the inspection of an abandoned oil well on the portion of the site situated inland of the public access trail and protective lagoon buffer strip on the east bank of Ballona Lagoon. Disturbance of the protective lagoon buffer strip described in Special Condition Two (or the public trail that runs within it) is strictly prohibited. All development must occur in strict compliance with the proposal as set forth in the application, subject to the special conditions. Any proposed change or deviation from the approved plans shall be submitted to the Executive Director to determine whether an amendment to this permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plans, or disturbance of the protective lagoon buffer strip, shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

2. Protective Lagoon Buffer Strip - Easement for Public Access and Habitat Protection

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, and in accordance with the applicant's offer to do so, the applicant shall execute and record a document, in a form and content acceptable to the Executive Director, irrevocably offering to dedicate to a the City of Los Angeles (or other public agency or private association acceptable to the Executive Director) an easement for public access and habitat protection. The easement shall include a thirty-foot (30') deep strip of land over the entire width of the applicant's property as measured from the applicant's western (lagoon-side) property line as shown on **Exhibit #4 of the 11/22/05** staff report.

The recorded document shall include the following paragraph: No disturbance of vegetation or development shall occur within the dedicated area, with the exception of landscaping with native vegetation compatible with the preservation of the wetland coastal strand and dune environment, and the maintenance of the existing public walkway. Prohibited development within the dedicated area includes installation of permanent irrigation devices and the planting of non-native vegetation. The accepting agency or association shall have the right to access the easement to landscape it with native vegetation compatible with the preservation of the wetland coastal strand and dune environment and to maintain the public walkway. The applicant shall not interfere with the use of the lagoon buffer public access path across the easement, restoration of the lagoon buffer as strand habitat, and such fencing that is necessary to preserve the habitat.

The document shall be recorded free of prior liens and any other encumbrances that may affect said interest. The offer and restriction shall run with the land in favor of the People of the State of California, binding successors and assigns. The offer shall be irrevocable for a period of 21 years commencing upon the date of recording.

3. Construction Buffer

No runoff or waste from the construction site shall be permitted to enter the waters of Ballona Lagoon or the protective lagoon buffer strip described in Special Condition Two above. In order to create a protective buffer between the waters of Ballona Lagoon and the site of the proposed residence, and to protect the lagoon from runoff from the project site, the permittee shall erect a six-foot high fence with a silt curtain and sandbag containment berm along the length of the site (parallel to the lagoon's shoreline). The fence, silt curtain and containment berms shall be in place prior to any excavation or placement of building materials on the site, and shall contain all runoff and waste from the project site. The permittee shall place the fence and containment berm a minimum of three feet inland of the public access path. The permittee shall attach a 24-inch high silt curtain along the bottom of the fence and place a 24-inch high containment berm constructed of sand-filled bags along the inland side of the fence. The fence and containment berm shall be maintained and shall remain in place until the completion of the residence. There shall be no foot traffic, stock piling, grading, vegetation removal, trash disposal, equipment storage, excavation, placement of fill, or any other development within the protective buffer area established between the waters of the lagoon and the fence.

4. Water Quality

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a Construction Best Management Practices (BMP) Plan for the proposed project that provides for the following:

- a) During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into the lagoon or street that drains into the lagoon, unless specifically authorized by the California Regional Water Quality Control Board.
- b) All construction equipment and materials shall be stored and managed in a manner to minimize the potential of pollutants to enter the lagoon.
- c) Washout from concrete trucks shall be disposed of at a controlled location not subject to runoff into the lagoon, and more than fifty feet away from a storm drain, open ditch or surface waters.
- d) In the event that hydrocarbon-contaminated soils or other toxins or contaminated material are discovered on the site, such matter shall be stockpiled and transported off-site only in accordance with Department of Toxic Substances Control (DTSC) rules and/or Regional Water Quality Control Board (RWQCB) regulations.

The Construction Best Management Practices Plan approved by the Executive Director pursuant to this condition shall be attached to all final construction plans. The permittee shall undertake the approved development in accordance with the approved Construction Best Management Practices Plan. Any proposed changes to the approved

Construction Best Management Practices Plan shall be reported to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

5. Coastal Development Permit A-266-77 (ILA)

Through the acceptance of this coastal development permit, the applicant acknowledges and agrees that: A) The project site is subject to amended Coastal Development Permit A-266-77 (ILA) and that all development must be consistent with amended Coastal Development Permit A-266-77 (ILA), and, B) All public areas provided and improved pursuant to amended Coastal Development Permit A-266-77 (ILA), including Union Jack Mall, the other landscaped malls, the public streets and alleys, all public parking spaces, and the Ballona Lagoon public access path, shall remain open and available for use by the general public on the same basis as similar public areas within the City.

6. Maintenance of Public Areas

In order to maintain the public areas designated in the Silver Strand and Del Rey Beach tracts, the permittee and successors in interest shall: A) participate with the other lot owners subject to Coastal Development Permits A-266-77, 5-86-641 and 5-87-112 on a fair and equitable basis in the responsibility for the maintenance of the public areas, lagoon buffers, and drainage devices prescribed by Coastal Development Permits A-266-77, 5-86-641 and 5-87-112; B) allow the State Coastal Conservancy and the City of Los Angeles, and their successors in lagoon buffer maintenance, the right to enter, restore and maintain the lagoon buffer situated between the waters of the lagoon and the house; and C) maintain all yard areas and height limits within sixty feet of the lagoon bank as specified in the special conditions this permit. The public areas are identified on **Exhibit #8 of the 11/22/05** staff report entitled "Public Buffer and Drainage Areas."

7. Parking

The applicant shall provide at least three off-street parking spaces on the project site. These parking spaces shall take access only from Via Donte, as shown on the project plans. The courts and street ends in the Silver Strand area are designated for public parking and shall not be used as parking for the residence approved by this coastal development permit. This condition shall serve as notification that amended Coastal Development Permit A-266-77 (ILA) reserves parking on the street ends in the Silver Strand area for public parking, and that these public parking areas shall not be used for any type of preferential parking. It also serves notice that the street and street ends adjacent to the project site shall not be reserved to any homeowner(s).

8. Setback from Protective Lagoon Buffer Strip

All portions of the dwelling (including stairways, balconies and bay windows), except for ground level decks, shall be set back from the easterly edge of the lagoon buffer strip at least 12.75 feet (fifteen percent of the buildable length of the lot). The total height of any

deck, deck railings, garden walls, and/or fences situated within the setback area shall not exceed six feet in height above the elevation of the lagoon buffer strip located immediately adjacent to the setback area. No fence, wall or other accessory structure shall encroach into the lagoon buffer strip situated between the waters of the lagoon and the house.

9. Building Height

The height of the proposed structure within sixty horizontal feet of the mean high tide line of Ballona Lagoon or inland side of the Esplanade (City right-of-way), whichever is furthest from the water, shall not exceed thirty feet (30') above the existing average natural grade (elevation 14.78'). Beyond sixty horizontal feet, one foot in additional height is permitted for each two additional horizontal feet to a maximum height of 45 feet above the existing average natural grade. No portion of any structure (including roof access structures, roof deck railings and architectural features) shall exceed the thirty-foot height limit within sixty horizontal feet of the mean high tide line of Ballona Lagoon or the inland side of the Esplanade, whichever is furthest from the water.

10. Deed Restriction

PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: A) indicating that, pursuant to this coastal development permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and B) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel governed by this coastal development permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this coastal development permit shall continue to restrict the use and enjoyment of the subject property so long as either this coastal development permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description and Background

The applicant proposes to construct a four-level, 45-foot high, 5,860 square foot single-family residence on a vacant lagoon-fronting vacant lot in South Venice (Exhibits #4-6). The 4,550 square foot lot is situated on the corner of Via Donte and Union Jack Mall in the Del Rey Beach Tract (Exhibit #2). The area is referred to as the "Silver Strand Area." The proposed residence provides three on-site parking spaces within a three-car garage, with vehicular

access only from Via Donte (Exhibit #4). Ballona Lagoon, which fronts the site, is a tidal lagoon designated as an Environmentally Sensitive Habitat Area (ESHA) by the certified Venice Land Use Plan (Exhibit #3).

The proposed development includes the excavation and inspection of an abandoned oil/natural gas wellhead believed to be buried on the property. The applicant asserts that the wellhead is probably situated under the footprint of the proposed house, inland of the lagoon buffer strip. No work is proposed or permitted within the protective lagoon buffer strip that exists on the western (lagoon side) of the project site (Exhibit #4). The California Department of Conservation's Division of Oil, Gas and Geothermal Resources has determined that the abandoned well must be inspected, tested, and reabandoned to current standards (Exhibit #7, p.2). An amendment to this permit would be required before the applicant is permitted to search for the wellhead on the western portion of the lot that lies within the protective lagoon buffer strip. Special Conditions One and Two strictly prohibit any disturbance of the protective lagoon buffer strip described in Special Condition Two (or the public trail that runs within the buffer).

History

On July 11, 1985, the Commission approved a coastal development permit for a similar-sized single-family residence on the site, but that permit expired in 1987 without being vested. [See Coastal Development Permit 5-85-373 (Mitchell/Nowak)]. On September 10, 2002, the Commission approved another coastal development permit for a similar-sized single-family residence on the site, but that permit also expired without being vested. [See Coastal Development Permit 5-02-193 (MacKenzie)].

The Silver Strand subdivision and the Del Rey Beach Tract share a long history before the Coastal Commission. Both subdivisions, referred to together as the Silver Strand area, are located along the east bank of Ballona Lagoon and have only recently been developed with single-family residences. Although the subdivisions were created in the early 1900s, the development of the area with residences did not occur until the late 1970s. Therefore, the Commission has reviewed and permitted the development of the subdivisions with single-family residences.

The first Commission approval in the area occurred in 1977 when the Commission approved the "Silver Strand Permit", A-266-77 (ILA), which was brought before the Commission on an appeal. Prior to the Commission's action on Coastal Development Permit A-266-77 (ILA) in 1977, the Commission and its predecessor denied several applications to improve the streets and supply utilities within portions of the Silver Strand subdivision and the Del Rey Beach Tract to make residential development possible. The previous projects were denied because of adverse impacts on traffic, recreation and wetland habitat.

The projects were proposed by a consortium of comprised of most of the owners of the approximately three hundred undeveloped lots located on Blocks 7 through 18 of the Silver Strand subdivision and Blocks 13 through 15 of the Del Rey Beach Tract (Exhibit #2). The consortium represented most of the lot owners, although the gas company which owned several lots and a few other individual lot owners refused to join. The consortium was judged to have the legal ability to apply for a permit to grade the lots, improve the streets, and supply

utilities within the Silver Strand area so that individual lot owners would eventually be able to build homes under separate permits.

The Commission's 1977 approval of Coastal Development Permit A-266-77 (ILA) permitted the consortium of applicants, the Isthmus Landowners Association (ILA), to develop the infrastructure necessary for the development of single-family homes on approximately three hundred lots located on Blocks 7 through 18 of the Silver Strand subdivision and Blocks 13 through 15 of the Del Rey Beach Tract (Exhibit #3). The currently proposed project is located on a lot (**Lot 1, Block 13, Del Rey Beach Tract**) which is subject to Coastal Development Permit A-266-77 (ILA) (Exhibit #2).

Coastal Development Permit A-266-77 (ILA) was subject to conditions addressing lagoon protection, maintenance of public areas, public access, and public parking. The Commission found that Ballona Lagoon, located adjacent to the Silver Strand and Del Rey Beach subdivisions and about two hundred feet west of the subject site, was critical habitat area and an important coastal resource. The Commission further found that residential development of the Silver Strand area would have major adverse cumulative impacts on the lagoon and that several measures were necessary to mitigate the adverse impacts of development.

One of the mitigation measures to reduce the impacts of the residential development on the lagoon was the requirement for the dedication of an easement (for habitat protection and public access) as part of the east bank protective lagoon buffer strip (Exhibit #8). The protective lagoon buffer strip has been restored with native vegetation as part of the Ballona Lagoon Enhancement Plan [See Coastal Development Permit 5-95-152 (Ballona Lagoon Enhancement Plan)]. A thirty-foot deep section of the 115-foot long lot comprises part of the protective lagoon buffer strip that exists along the east bank (Exhibit #2). This portion of the project site has been restored with native vegetation as part of the Ballona Lagoon Enhancement Plan.

As required by the certified Venice LUP and Coastal Development Permit A-266-77, the applicant is offering to dedicate this portion of the lot as a thirty-foot deep easement for habitat restoration and public access purposes (Exhibit #4). The lagoon buffer strip easement being offered on the applicant's lot is one of the last sections of the lagoon buffer still to be dedicated. As part of the Ballona Lagoon Enhancement Plan, the City of Los Angeles has accepted most of the east bank easements that comprise the protective lagoon buffer strip. These easements, which exist on all but a few of the lagoon-fronting lots, allow for the existence and maintenance of native landscaping and the Ballona Lagoon east bank public access trail (Exhibit #8).

Another mitigation measure was a condition of Coastal Development Permit A-266-77 (ILA) that required the owners of the lots subject to Coastal Development Permit A-266-77 (ILA) to establish a private homeowners association sufficient to maintain all public areas and landscaping approved and required by the permit. Because all of the owners of the lots subject to Coastal Development Permit A-266-77 (ILA) would benefit from the permitted tract improvements, the Commission required each lot owner to contribute to the maintenance of the improvements. The public areas are identified on the attached exhibit entitled "Public Buffer and Drainage Areas" (Exhibit #8).

The findings and special conditions of approval established through the Commission's approval of Coastal Development Permit A-266-77 (ILA) have become the standard by which subsequent permits in the area are reviewed in order to ensure consistency with the Chapter 3 policies of the Coastal Act, and these conditions provide the basis for the mitigating special conditions that have been routinely applied to all subsequent coastal development permits in the area, including this one. The special conditions ensure that the Chapter 3 policies of the Coastal Act and the underlying permit are carried out as individual lots are developed in the Silver Strand area.

Special Condition Six, in particular, requires the applicant to participate in the private homeowners association established¹ under amended Coastal Development Permit A-266-77 (ILA) in the maintenance of the public areas and landscaping (e.g., pedestrian malls, parking nodes, lagoon buffer and pathway) that have been installed pursuant to Coastal Development Permit A-266-77 (ILA) and the other permits authorizing the development in the Silver Strand area [See Exhibit #2: Coastal Development Permits 5-86-641 (Lee) and 5-87-112 (Del Rey Assoc.)]. The public areas are identified on the attached "Public Areas Exhibit – Del Rey/Silver Strand" (Exhibit #8). Only as conditioned does the proposed development conform with the Chapter 3 policies of the Coastal Act and the prior permits.

B. Public Access

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

C. Public Recreation

The proposed development, as conditioned, does not interfere with public recreational use of coastal resources. The proposed development, as conditioned, protects coastal areas suited for recreational activities. Therefore, the Commission finds that the proposed development, as conditioned, is in conformity with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

D. Marine Resources and Water Quality

The proposed work will be occurring in a location where there is a potential for a discharge of polluted runoff from the project site into coastal waters. The storage or placement of construction material, debris, or waste in a location where it could be carried into coastal waters would result in an adverse effect on the marine environment. To reduce the potential for construction and post-construction related impacts on water quality, the Commission imposes special conditions requiring, but not limited to, the appropriate storage and handling of construction equipment and materials to minimize the potential of pollutants to enter coastal waters and for the use of on-going best management practices following construction. As conditioned, the Commission finds that the development conforms with Sections 30230 and 32031 of the Coastal Act.

¹ In 1980, the permittee for Coastal Development Permit A-266-77, the Isthmus Landowners Association (ILA), established itself as the association responsible for the maintenance of the public areas.

E. Development

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area, has been designed to assure structural integrity, and will avoid cumulative adverse impacts on public access. Therefore, the Commission finds that the development, as conditioned, conforms with Sections 30250, 30251, 30252, 30253 and the public access provisions of the Coastal Act.

F. Environmentally Sensitive Habitat Areas (ESHA)

As conditioned, the development will not result in significant degradation of adjacent habitat, recreation areas, or parks and is compatible with the continuance of those habitat, recreation, or park areas. Therefore, the Commission finds that the project, as conditioned, conforms with Section 30240(b) of the Coastal Act.

G. Deed Restriction

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes one additional condition requiring that the property owner record a deed restriction against the property, referencing all of the Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development.

H. Local Coastal Program

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The City of Los Angeles Land Use Plan (LUP) for Venice was effectively certified on June 14, 2001. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

I. California Environmental Quality Act (CEQA)

As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.